

MONTANA LEGISLATIVE HISTORY

Chapter 294 19 73

Bill H _____ S 445 Original bill & history ☒ C

H. Committee on Nat. Resources S. Committee on Nat. Resources

Hearing Date(s) 3/1/73 ☒ C Hearing Date(s) 2/13/73 ☒ C

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Date Out _____ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE BILL NO. 445
 INTRODUCED BY *Danvers DeLoatch Bennett*
Deputy Clerk *McBroom* *W. K. M. M. M.*
 89-3503 THROUGH 89-3506, 89-3508 *DeLoatch*

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS 89-3503 THROUGH 89-3506 AND 89-3508, R.C.M. 1947, PROVIDING FOR A CHANGE IN THE DEFINITION OF A FIFTY (50) YEAR FLOOD FREQUENCY TO A FLOOD OF ONE HUNDRED (100) YEAR FREQUENCY; PROVIDING FOR IMMEDIATE ENFORCEMENT OF A DESIGNATED FLOODWAY WHEN AN EMERGENCY EXISTS; AND PROVIDING FOR AUTHORITY IN THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ENTER INTO AGREEMENTS WITH PRIVATE CONSULTANTS FOR ACQUIRING FLOOD DATA."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 89-3503, R.C.M. 1947, is amended to read as follows:

"89-3503. Definitions. As used in this act, unless the context otherwise requires:

(1) ~~"A flood of fifty-year frequency shall mean a flood magnitude expected to recur on the average of once every fifty (50) years, or a flood magnitude which has a two per cent (2%) chance of occurring in any given year."~~ "A

flood of one hundred (100) year frequency" means a flood magnitude expected to recur on the average of once every one hundred (100) years, or a flood magnitude which has a one percent (1%) chance of occurring in any given year;

(2) "Artificial obstruction" shall mean any obstruction which is not a natural obstruction;

(3) "Channel" shall mean the geographical area within either the natural or artificial banks of a watercourse or drainway;

(4) "Board" shall mean the Montana water resources board;

(5) "Department" means the department of natural resources and conservation provided for in title 82A, chapter 15;

~~(5)~~ (6) "Designated floodway" shall mean a floodway whose limits have been designated and established by order of the board.

~~(6)~~ (7) "Drainway" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;

~~(7)~~ (8) "Flood" shall mean the water of any watercourse

1 or drainway which is above the bank or outside the channel
2 and banks of such watercourse or drainway;

3 ~~(8)~~ (9) "Floodway" shall mean the channel of a
4 watercourse or drainway and those portions of the floodplain
5 adjoining the channel which are reasonably required to carry
6 and discharge the flood water of any watercourse or
7 drainway;

8 ~~(9)~~ (10) "Floodway-encroachment lines" shall mean the
9 lines limiting a designated floodway;

10 ~~(10)~~ (11) "Floodplain" shall mean the area adjoining
11 the watercourse or drainway which has been or may hereafter
12 be covered by flood water;

13 ~~(11)~~ (12) "Establish" shall mean construct, place,
14 insert, or excavate;

15 ~~(12)~~ (13) "Natural obstruction" shall mean any rock,
16 tree, gravel, or analogous natural matter that is an
17 obstruction and has been located within the floodway by a
18 nonhuman cause;

19 ~~(13)~~ (14) "Obstruction" shall mean any dam, wall,
20 riprap, embankment, levee, dike, pile, abutment, projection,
21 revetment, excavation, channel rectification, bridge,
22 conduit, culvert, building, refuse, automobile body, fill,
23 or other analogous structure or matter in, along, across, or
24 projecting into any floodway which may impede, retard or
25 change the direction of the flow of water, either in itself

1 or by catching or collecting debris carried by such water,
2 or that is placed where the natural flow of the water would
3 carry the same downstream to the damage or detriment of
4 either life or property;

5 ~~(14)~~ (15) "Owner" shall mean any person who has
6 dominion over, control of, or title to an obstruction;

7 ~~(15)~~ (16) "Political subdivision" shall mean any
8 incorporated city or town or any county organized and having
9 authority to adopt and enforce land-use regulations; and

10 ~~(16)~~ (17) "Watercourse" shall mean any depression two
11 (2) feet or more below the surrounding land serving to give
12 direction to a current of water at least nine (9) months of
13 the year, having a bed and well-defined banks; provided,
14 that it shall, upon order of the board, also include any
15 particular depression which would not otherwise be within
16 the definition of watercourse."

17 Section 2. Section 89-3504, R.C.M. 1947, is amended
18 to read as follows:

19 "89-3504. Program for delineation of floodways --
20 floodway-encroachment lines -- land-use regulations. (1) The
21 board shall initiate a comprehensive program for the
22 delineation of designated floodways for every watercourse
23 and drainway in the state. It shall make a study relating
24 to the acquiring of flood data, and have authority to enter
25 into arrangements with the United States geological survey,

1 the United States army corps of engineers or any other state
2 or federal agency for such acquisition.

3 (2) When sufficient data have been acquired to
4 reasonably locate the floodway of a flood of fifty-year one
5 hundred (100) year frequency, the board shall establish, by
6 order, after a public hearing, floodway-encroachment lines
7 for such a floodway within which a political subdivision may
8 establish land-use regulation. The board shall furnish such
9 data to officials of the political subdivision having
10 jurisdiction over such areas together with a map outlining
11 the areas involved, a copy of this act, adopted rules and
12 regulations of the board, and suggested minimum standards.
13 These standards, rules and regulations shall reflect
14 gradations in flood hazard based on flood frequency and
15 other criteria as outlined in subsection (2) of section 7
16 [89-3507 (2)] of this act. The location of the encroachment
17 lines shall be the estimated outer boundary of the floodway
18 of fifty-year one hundred (100) year frequency flood, as
19 determined from the available data. The board shall record
20 all floodway-encroachment lines established by it in the
21 office of the county clerk and recorder of each county in
22 which such lines are found. The board shall have the power
23 to alter such lines at any later time, by order, after a
24 public hearing if a re-evaluation of the then available
25 flood data warrants it. Notice of any such hearing or order

1 of the board establishing or altering any such line shall be
2 given by publishing such notice once each week for three
3 consecutive weeks in a legal newspaper published or of
4 general circulation in the area involved, the last
5 publication of which shall be not less than ten (10) days
6 prior to the date set for the hearing or the effective date
7 of such order.

8 (3) If within one (1) year from the date of transmittal
9 of the floodplain information to officials of the political
10 subdivisions, any political subdivision has failed to adopt
11 land-use regulations which meet or exceed the minimum
12 standards of the board, the designated floodway shall be
13 enforced and no artificial obstruction or nonconforming use
14 shall be established by any person within the
15 floodway-encroachment lines for such a fifty-year one
16 hundred (100) year flood as established by the board under
17 subsection (2) of this section, unless specifically
18 authorized by the board.

19 (4) If the board of natural resources and conservation
20 finds that a condition exists that creates an emergency
21 requiring immediate action to protect human welfare, health
22 or safety or to protect property due to the impending
23 establishment of any artificial obstruction or nonconforming
24 use on a floodway, the board of natural resources and
25 conservation may announce its intention to establish the

1 designated floodway based upon available data. Said
 2 announcement shall specify in detail the reasons therefor,
 3 the nature and content of the available data relied upon,
 4 the nature of the artificial obstruction or nonconforming
 5 use, and why such obstruction or use creates an emergency.
 6 Said board shall set a time for a public hearing on the
 7 announcement, to be held no sooner than ten (10) nor later
 8 than twenty (20) days after the announcement, and the board
 9 shall publish notice of the hearing and the announcement in
 10 a prominent place in a newspaper of general circulation in
 11 the affected area at least three (3) times prior to the
 12 hearing date. The last such publication shall precede the
 13 hearing by at least two (2) days but not by more than seven
 14 (7) days. The board shall also mail notice to the county
 15 commissioners of each affected county and to the titleholder
 16 of any land which would be affected.

17 At the hearing, the board of natural resources and
 18 conservation shall receive evidence and testimony from any
 19 person who would be adversely affected, and any person who
 20 can show injury and any person who is within the zone of
 21 interest to be protected by the designation of the floodway.
 22 Said board shall make a written record of the proceeding,
 23 and shall, within ten (10) days following the hearing,
 24 render a decision, supported by an opinion, either adopting,
 25 modifying or rejecting the proposed emergency measure. If

1 it decides to adopt in whole or part the proposed emergency
 2 measure, it shall make an appropriate order and record it in
 3 the office of the county clerk and recorder of each county
 4 in which the designated floodway is found. Thereupon the
 5 designated floodway shall be enforced by the department in
 6 accordance with minimum standards adopted by the board of
 7 natural resources and conservation for a period of one (1)
 8 year. The said board may extend the period of enforcement
 9 for one (1) year, but not more than one (1) such extension
 10 may be made. Whenever an order is adopted under this
 11 subsection, the order shall be mailed by the department to
 12 the titleholder of any land affected by the order not less
 13 than ten (10) days before the effective date of the order.

14 Any person who appeared at the hearing and participated
 15 therein, may appeal from the order to a court of competent
 16 jurisdiction within thirty (30) days after its effective
 17 date."

18 Section 3. Section 89-3505, R.C.M. 1947, is amended
 19 to read as follows:

20 "89-3505. Artificial obstructions and nonconforming
 21 uses as nuisances. Any artificial obstruction or
 22 nonconforming use in any designated floodway enforced under
 23 subsection--(3)--of--section--4--(89-3504--(3))--of--this--act
 24 section 89-3504, subsections (3) or (4) and not exempt under
 25 section 6 [89-3506] of this act is hereby declared to be a

public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the board."

Section 4. Section 89-3506, R.C.M. 1947, is amended to read as follows:

"89-3506. Establishment of artificial obstructions or nonconforming uses unlawful--permitted open space uses--prohibited nonconforming uses. (1) It shall be unlawful for a person to establish any artificial obstruction or nonconforming use within a designated floodway, or (2) for any owner to permit any artificial obstruction to remain within a designated floodway without a permit from the board. This act shall not affect any existing artificial obstruction or nonconforming use established in the floodway prior to the effective date of this act and before the board has enforced a designated floodway under ~~subsection (3) of section 89-3504~~ section 89-3504, subsections (3) or (4); provided, that no person shall make nor shall any owner allow alterations of any artificial obstruction within a designated floodway whether the obstruction proposed for alteration was located in the floodway before or after the effective date of this act except upon express written approval of the board. Maintenance of an obstruction shall not be construed to be an alteration.

(2) The following open space uses shall be permitted

within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment; (a) agricultural uses (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips (c) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails (d) forestry, including processing of forest products with portable equipment (e) residential uses such as lawns, gardens, parking areas and play areas (f) excavations subject to the issuance of a permit under section 7 [89-3507].

(3) The following nonconforming uses shall be prohibited within the designated floodway: (a) Any building for living purposes or place of assembly or permanent use by human beings (b) any structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway (c) the construction or permanent storage of any object subject to flotation or

1 movement during flood level periods."

2 Section 5. Section 89-3508, R.C.M. 1947, is amended
3 to read as follows:

4 "89-3508. Powers and duties of board relative to
5 obstructions. The powers and duties of the board relative to
6 obstructions in a board floodway shall include the
7 following:

8 (1) Where an obstruction to a floodway established
9 ~~under subsection (2) of section 4 (89-3504 (2)) of this act~~
10 section 89-3504, subsections (2) or (4) has been created by
11 fallen trees, silt, debris, wreckage, unanchored automobile
12 bodies, and like matter, the board may, in its discretion,
13 remove the obstruction, in which case the cost of removal
14 shall be borne by the board; and

15 (2) Where, after investigation, notice, and hearing, an
16 order has been issued to the owner of an obstruction not
17 exempt under the provisions of section 6 [89-3506] of this
18 act for its removal or repair, and the order is not complied
19 with within such reasonable time as may be prescribed, or if
20 the owner cannot be found or determined, the board may make
21 or cause such removal or repairs to be made, the cost of
22 which shall be borne by the owner and shall be recoverable
23 in the same manner as debts are now recoverable by law."

-End-

SAFETY ENVELOPE MFG. CO.
MILWAUKEE, WIS. 53201

House Natural Resources Comm.

MINUTES Jan. 4-23, 1973

FOLDER 27

House -

NATURAL RESOURCES

COMMITTEE

43 rd LEGISLATIVE SESSION 1973

[illegible]

COMMITTEE

43 rd LEGISLATIVE SESSION 1973

[illegible]

ROLL CALL VOTE

NATURAL RESOURCES

COMMITTEE

Page 5

	Date: 2-20-74 No: SB230 <i>Be Concurred In</i>	Date: 2-20-74 No: SB 211 <i>Be Concurred In</i>	Date: 2-20-74 No: SB 443 <i>Be Concurred In</i>	Date: 2-24-74 No: SB 60 <i>Be Concurred In</i>	Date: 2-27-74 No: SB 94 <i>Concurred In</i>	Date: 3-1-74 No: SB445 <i>Be Concurred In</i>	Date: 3-1-74 No: HR 21 <i>Be Concurred</i>	Date: 3-3-74 No: SB 008 <i>Be Concurred</i>
Arthur H. Sheldon	✓	✓	✓	✓	✓	✓	✓	✓
Dorothy M. Bradley	✓	✓	✓	✓	✓	✓	✓	✓
A. L. Ainsworth	✓	✓	✓	✓	absent	✓	✓	✓
Ruth B. Castles	✓	✓	✓	✓	✓	NO	✓	absent
Richard A. Colberg	✓	✓	✓	✓	✓	✓	✓	✓
Hal Harper	✓	✓	✓	✓	✓	✓	✓	✓
Herb Huennekens	✓	✓	✓	✓	✓	✓	✓	✓
George R. Johnston	✓	✓	✓	✓	absent	✓	✓	✓
Orphey Lien	NO	✓	✓	✓	absent	absent	absent	absent
James P. Lucas	✓	✓	✓	✓	✓	abstained	✓	absent
Conrad F. Lundgren	✓	✓	✓	✓	absent	✓	✓	absent
Joe Quilici	absent	absent	absent	absent	absent	✓	✓	✓
Henry J. Schepens	✓	✓	✓	✓	✓	✓	✓	✓
Elmer Schye	✓	✓	✓	✓	✓	✓	✓	absent
Gail Stoltz	✓	✓	✓	✓	✓	✓	✓	✓
Gorham E. Swanberg	absent	absent	absent	absent	absent	✓	✓	✓
John E. Walborn	✓	✓	✓	✓	✓	✓	✓	absent

Photocopied from collections in the Montana Historical Society Archives

Thursday, March 1, 1973

The Natural Resources Committee met at 10:35 a.m. in room 405 with Chairman Sheldon presiding.

Chairman Sheldon opened the meeting to a consideration of SB 445.

SENATE BILL 445:

Rep. Harper moved that SB 445 be concurred in.

There was much discussion by the committee members on the bill--many questions were asked of Gary Wicks and Chuck Parrett, Natural Resources and Conservation Department. They displayed maps of the Missoula area in which the 50 and 100 year flood plains were delineated to show that in actual area there was little difference. They again stressed their wish for this amendment to a present law so they could take advantage of information already gathered by the Army Corps of Engineers on the 100 year frequency and not have to do extensive, expensive research of their own on the 50 year frequency. Mr. Wicks, responding to a question, stated there were no appropriations from the administration for this project. He said Mr. Parrett had been doing the studies that had been done.

Rep. Lucas made a substitute motion to defer action on SB 445 until the 1974 session. A roll call vote was taken and there were 10 no (Shelden, Bradley, Colberg, Huennekens, Johnston, Quilici, Schepens, Stoltz, Swanberg, Harper); five yes and two absent (Lien and Ainsworth).

Chairman Sheldon called for a roll call vote on Rep. Harper's motion to concur. There were 14 yes, Rep. Castles voted no, Rep. Lucas abstained, and Rep. Lien was absent.

HOUSE RESOLUTION 21:

Chairman Sheldon opened the meeting to a hearing on this resolution.

Rep. Asbjornson, the chief sponsor, stated it was a resolution from the Montana House of Representatives to the United States Congress asking them to provide funds for a study of Judith River. A group of people who live along this river, the Judith River Development Association, had requested this resolution because of flood damage during spring run-off.

HOUSE BILL 65:

Ted Doney, a state attorney, stated this bill had returned to the committee from the governor's office because of an error in a Senate amendment. The Senate had planned to put money earned as a result of sales of water projects in the general fund; but the way the wording is the sale of the water, too, can go either to the general fund or to the water district.

Rep. Lucas moved that the senate amendments to HB 65 be not concurred in. Motion carried unanimously except for those absent (Lien).

CONSIDERATION OF HR 21:

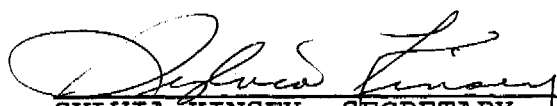
Rep. Walborn moved that HR 21 be adopted. The motion carried unanimously except for those absent (Lien).

N A T U R A L R E S O U R C E S

SENATE COMMITTEE

1973

SENATOR BERTSCHE, CHAIRMAN


SYLVIA KINSEY, SECRETARY

BILL NO. SENATE	ENTERED COMM.	COMMITTEE ON <u>NATURAL RESOURCES</u>							
		OUT OF COMM.	DO PASS	DO NOT PASS	DO PASS AS AMENDED	BE CON- CURRED IN	BE CONCURRED IN AS AMENDED	BE NOT CONCURRED IN	
60	1/4	1/13	x						S by G
94	1/11	2/11			x				S by G
108	1/12	2/11		x					Killed
145	1/16	2/11		x					Killed
188	1/18	2/11							HOLD
211	1/19	1/27			x				S by Gov
230	1/19	2/10	x						S by G
231	1/19	2/13		x					Killed
252	1/22								HELD
284	1/22			x					Killed
310	1/22	1/27			x				S by G
337	1/23								S by G
387	1/25								Tr to Jud
401	1/26	2/13							Tr--Hold
404	1/27	2/13	x						Hold
405	1/27	2/8							S by G
426	1/29	2/10	x						Hold
434	1/30	2/13							S By G
444	2/1	2/13			x				Hold
445	2/1	2/3	x						S by G
SJR 23	1/22	2/10			x				S by G
SJR 24	1/22	1/30			x				S by G
*443	1/31	2/13	x						S by G

[illegible]

The Seventeenth meeting of the Committee on Natural Resources met in the Highway Auditorium at 10 A.M. on Tuesday, February 13, 1973 to hear Senate Bills, 444 and SJR 39 and SB 445.

A motion was made by Senator Flynn, seconded by Senator McGowan to hold over SB 434. Voted and passed.

A motion by Senator McKeon, seconded by Senator Cochrane to hold over SB 401. Voted and passed.

A motion by Senator McKeon, seconded by Senator Bennett to ~~hold over~~ *Do Pass* SB 443.

A motion by Senator McKeon, seconded by Senator McGowan that Senate Bill 404 DO PASS. Voted and passed.

Senate Joint Resolution 39 was explained by Senator Darrow, also Senate Bill 445.

Proponents speaking for SJR 39 were a gentleman who did not give his name, statement attached, as exhibit 1. Mr. George Pike, for the United States Geological Survey, statement attached, exhibit 2.

Senate Bill 444 was explained by Senator McGowan and the proponents on the bill were as follows:

Mr. Fred Caruso, representative of the Montana Water Development Association, statement attached as exhibit 3.

Gary Wicks, Director of Natural Resources and also with the Conservation spoke on the bill listing the need for the state to use its water for beneficial use, and to have it filed to avoid the deadline and the Federal Government stepping in with the water being lost to downstream users.

Senator McOmber, from the Sun River irrigation project felt that the state must pass its water laws or lose its water.

Representative Nichols, District 22 concurred.

Cecil Weeding, member of the Governor's Advisory Council on Water, also spoke as an opponent.

Opponents of the bill were as follows:

W. G. Gilbert, representing several irrigation organizations, a rancher, and an attorney.

James Paugh, Gallatin County Farm Bureau.

Charles Eckles, Fishtail, representing the Stillwater County and Stillwater Farm Bureau.

Pete Zurkey, representing the Stillwater Woolgrower's Association.

Wesley D'Ewart, speaking for himself.

Conrad B. Fredricks, Big Timber, self.

Carl M. Davis, Dillon, representing Clark Canyon Water Co., East Bench Irrigation District.

Jim Pawl, member of the Gallatin County District and several irrigation ditches and ditch riders.

Jeff Brazier, Western Montana Mining Association.

Ben Berg, Bozeman, representing himself at the request of ditch owners.

Further proponents speaking in support of SB 444 were Hubert White, Montana Water Development Association.

John Morrison, stated 40 million feet of water flowed out of the state to downstream users.

Charlie Bowman, spoke in defense of the commission making up the bill, that it was imperative that something be done or we will lose our water, and that the present records were not adequate to comply with the federal standards.

A motion by Senator McKeon, seconded by Senator McGowan that SB 444 DO PASS. Motion passed, Senator Flynn opposed.

A motion by Senator McKeon, seconded by Senator Cochrane that SB 445 DO PASS, motion passed.

A motion by Senator Cochrane, seconded by Senator McKeon that SJR 39 DO PASS. Motion voted and passed.

A motion by Senator Flynn, seconded by Senator McKeon that SB 108 DO NOT PASS, opposed by Senator Darrow, motion passed.

A motion by Senator McKeon, seconded by Senator Cochrane that SB 145 DO NOT PASS. Motion carried.

A motion by Senator McKeon, seconded by Senator Cochrane that SB 231 DO NOT PASS, voted and passed.

The meeting adjourned.


WM. H. BERTSCHE, Chairman

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 69-6004, R.C.M. 1947, is amended to read as follows:

"69-6004. Action by city or town council—effect—notice.

(1) Upon passage of such resolution of intention, *the* commissioners shall transmit a copy of the same to the executive head of any incorporated city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur, in the resolution of the commissioners, a copy of the resolution of concurrence shall be transmitted to the commissioners. If the incorporated city or town council does not concur in the resolution of the commissioners, the commissioners shall have no authority to include said town or city in the district, but may continue to develop the district, but excluding said town or city.

(2) *The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, a notice describing the general characteristics of the collection system and estimated costs; designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district; and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office. The notice shall be published in the newspaper published nearest to the place where the proposed district is to be created for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper; posted in three (3) public places within the boundaries of the proposed district; and a copy mailed by first class mail to every person, firm, or corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published."*

Section 2. Section 69-6005, R.C.M. 1947, is amended to read as follows:

"69-6005. Written protest—hearing—effect. At any time within thirty (30) days after the date of the first publication of the *notice provided in section 69-6004*, any owner of property liable to be assessed for said service may make written protest against the proposed service. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the commissioners, after the expiration of the time within [which] such said protest may be so made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the pro-

posed service is made by the owners of more than fifty per cent of the family residential units; each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining per cent of protest; in the proposed district, no further proceedings shall be taken by the commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts, shall be considered the same as any other property in the district. The commissioners may adjourn said hearings from time to time."

Section 3. Section 69-6006, R.C.M. 1947, is amended to read as follows:

"69-6006. Jurisdiction to order improvements—passage of resolution—brief description and reference. When no protests have been delivered to the county clerk within thirty (30) days after the date of the first publication of the notice *provided in section 69-6004*, or when a protest shall have been found by said commissioners to be insufficient, or shall have been overruled, immediately thereupon, the commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the commissioners shall pass a resolution creating the said refuse disposal district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvement, it shall be sufficient to briefly describe the work of the refuse disposal district and to refer to the resolution of intention for further particulars."

Approved March 15, 1973.

CHAPTER NO. 294

An Act to Amend Sections 89-3503 through 89-3506 and 89-3508, R.C.M. 1947, Providing for a Change in the Definition of a Fifty (50) Year Flood Frequency to a Flood of One Hundred (100) Year Frequency.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-3503, R.C.M. 1947, is amended to read as follows:

"89-3503. **Definitions.** As used in this act, unless the context otherwise requires:

(1) *"A flood of one hundred (100) year frequency" means a flood magnitude expected to recur on the average of once every one hundred (100) years, or a flood magnitude which has a one percent (1%) chance of occurring in any given year;*

(2) *"Artificial obstruction" shall mean any obstruction which is not a natural obstruction;*

(3) *"Channel" shall mean the geographical area within either the natural or artificial banks of a watercourse or drainway;*

(4) *"Board" shall mean the Montana water resources board;*

(5) *"Department" means the department of natural resources and conservation provided for in title 82A, chapter 15;*

(6) *"Designated floodway" shall mean a floodway whose limits have been designated and established by order of the board.*

(7) *"Drainway" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;*

(8) *"Flood" shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;*

(9) *"Floodway" shall mean the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;*

(10) *"Floodway-encroachment lines" shall mean the lines limiting a designated floodway;*

(11) *"Floodplain" shall mean the area adjoining the watercourse or drainway which has been or may hereafter be covered by flood water;*

(12) *"Establish" shall mean construct, place, insert, or excavate;*

(13) *"Natural obstruction" shall mean any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause;*

(14) *"Obstruction" shall mean any dam, wall, riprap, embank-*

ment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

(15) *"Owner" shall mean any person who has dominion over, control of, or title to an obstruction;*

(16) *"Political subdivision" shall mean any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations; and*

(17) *"Watercourse" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse."*

Section 2. Section 89-3504, R.C.M. 1947, is amended to read as follows:

"89-3504. Program for delineation of floodways—floodway-encroachment lines—land-use regulations. (1) The board shall initiate a comprehensive program for the delineation of designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data, and have authority to enter into arrangements with the United States geological survey, the United States army corps of engineers or any other state or federal agency for such acquisition.

(2) When sufficient data have been acquired to reasonably locate the floodway of a flood of *one hundred (100) year* frequency, the board shall establish, by order, after a public hearing, floodway-encroachment lines for such a floodway within which a political subdivision may establish land-use regulation. The board shall furnish such data to officials of the political subdivision having jurisdiction over such areas together with a map outlining the areas involved, a copy of this act, adopted rules and regulations of the board, and suggested minimum standards. These standards, rules and regulations shall reflect gradations in flood hazard based on flood frequency and other criteria as outlined in subsection (2) of section 7 [89-3507 (2)] of this act. The location of the encroachment lines shall be the estimated outer boundary of the floodway of *one hundred (100) year* frequency flood, as determined from the

available data. The board shall record all floodway-encroachment lines established by it in the office of the county clerk and recorder of each county in which such lines are found. The board shall have the power to alter such lines at any later time, by order, after a public hearing if a re-evaluation of the then available flood data warrants it. Notice of any such hearing or order of the board establishing or altering any such line shall be given by publishing such notice once each week for three consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of such order.

(3) If within one (1) year from the date of transmittal of the floodplain information to officials of the political subdivisions, any political subdivision has failed to adopt land-use regulations which meet or exceed the minimum standards of the board, the designated floodway shall be enforced and no artificial obstruction or nonconforming use shall be established by any person within the floodway-encroachment lines for such a *one hundred (100) year* flood as established by the board under subsection-(2) of this section, unless specifically authorized by the board."

Section 3. Section 89-3505, R.C.M. 1947, is amended to read as follows:

"89-3505. **Artificial obstructions and nonconforming uses as nuisances.** Any artificial obstruction or nonconforming use in any designated floodway enforced under *section 89-3504, subsections (3) or (4)* and not exempt under section 6 (89-3506) of this act is hereby declared to be a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the board."

Section 4. Section 89-3506, R.C.M. 1947, is amended to read as follows:

"89-3506. **Establishment of artificial obstructions or nonconforming uses unlawful—permitted open space uses—prohibited nonconforming uses.** (1) It shall be unlawful for a person to establish any artificial obstruction or nonconforming use within a designated floodway, or (2) for any owner to permit any artificial obstruction to remain within a designated floodway without a permit from the board. This act shall not affect any existing artificial obstruction or nonconforming use established in the floodway prior to the effective date of this act and before the board has enforced a designated floodway under *section 89-3504, subsections (3) or (4)*; provided, that no person shall make nor shall any owner allow alterations of any artificial obstruction within a designated floodway

whether the obstruction proposed for alteration was located in the floodway before or after the effective date of this act except upon express written approval of the board. Maintenance of an obstruction shall not be construed to be an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment; (a) agricultural uses (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips (c) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails (d) forestry, including processing of forest products with portable equipment (e) residential uses such as lawns, gardens, parking areas and play areas (f) excavations subject to the issuance of a permit under section 7 [89-3507].

(3) The following nonconforming uses shall be prohibited within the designated floodway: (a) Any building for living purposes or place of assembly or permanent use by human beings (b) any structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway (c) the construction or permanent storage of any object subject to flotation or movement during flood level periods."

Section 5. Section 89-3508, R.C.M. 1947, is amended to read as follows:

"89-3508. **Powers and duties of board relative to obstructions.** The powers and duties of the board relative to obstructions in a board floodway shall include the following:

(1) Where an obstruction to a floodway established under *section 89-3504, subsections (2) or (4)* has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the board may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the board; and

(2) Where, after investigation, notice, and hearing, an order has been issued to the owner of an obstruction not exempt under the provisions of section 6 [89-3506] of this act for its removal or repair, and the order is not complied with within such reasonable

time as may be prescribed, or if the owner cannot be found or determined, the board may make or cause such removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law."

Approved: March 15, 1973

CHAPTER NO. 295

An Act Authorizing the Department of Revenue to Investigate Matters Relating to Public Welfare Payments; to Institute Civil and Criminal Actions for Enforcement of the Welfare Laws and to Require the Cooperation of Other Agencies to Effectuate the Purposes of this Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. When requested by the department of social and rehabilitation services, the department of revenue shall have the power and duty to:

(a) investigate matters relating to public welfare assistance and vendor payments including but not limited to the claim for an acceptance of welfare benefits by welfare recipients, and the receipt and disbursal of welfare funds by state, county or other governmental agencies;

(b) institute civil or criminal actions in the appropriate courts to enforce the welfare laws and violations thereof.

Section 2. All state departments and agencies and county or other governmental agencies shall cooperate with the department of revenue and its employees to effectuate the purpose of this act.

Section 3. (1) The department of social and rehabilitation services and its local units shall make available to the department of revenue information contained in the welfare files pertinent to the investigations and judicial actions described in section 1.

(2) Every other state, county, or other governmental agency shall make available to the agents or attorneys of the department of revenue, all records, files, memoranda, forms or other papers relating to public welfare matters including income tax returns filed with the department of revenue.

Section 4. (1) No information obtained by the department of revenue or its agents and attorneys as a result of an investi-

gation shall be disclosed except in accordance with the laws applicable to the source of information; provided, however, such information may be used or disclosed as necessary in any court action.

(2) Each employee violating the disclosure provisions shall be subject to the criminal charge and penalties applicable to the source of information.

Section 5. As used in this act, "public welfare" and "welfare" mean any kind of financial or social assistance administered by or under the supervision of the department of social and rehabilitation services.

Approved: March 15, 1973.

CHAPTER NO. 296

An Act to Amend Section 4-414, R.C.M. 1947, "Hours for Sale of Liquor," by Deleting any Reference to Biennial General or Primary Election.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 4-414, R.C.M. 1947, is amended to read as follows:

"4-414. **Hours for sale of liquor.** No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two A. M. to one P.M.;

(b) On any other day between two A.M. and eight A.M.; provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town."

Approved: March 15, 1973

CHAPTER NO. 297

An Act To Provide For The Office of Lieutenant Governor Implementing Article VI, Section 1(3) of The 1972 Montana Constitution; Amending Sections 25-501 and 82-1703, R.C.M. 1947;